



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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November 12th, 1997

Minutes of the November 12th, 1997 meeting of the Commission on Governmental Ethics and Election Practices held in Room 122 of the State Office Building, Augusta.

Present: Chairman Peter W. Webster; members Linda W. Cronkhite, Harriet P. Henry, G. Calvin Mackenzie, Merle R. Nelson; Commission Counsel Phyllis Gardiner; Director Marilyn Canavan

Chairman Webster called the meeting to order at 9: 10 a.m. A motion was then made and seconded to approve the minutes of the October 8th, 1997 meeting as written.

Next, under old business, the Commission voted to remove from the table Item 2: consideration of the financing of Ms. Annette's Hoglund's 1996 election campaign.

First, the Commission reviewed the findings of the State Auditor with respect to reports filed by Ms. Hoglund's campaign committee. The findings showed that during the period from July 1st, 1996 through June 30th, 1997, the Committee to Elect Annette Hoglund (CEAH) staged a number of beano fund raisers; that the total income from the fundraisers was \$1,058,999.52; that of that amount, CEAH paid \$769,969.10 in cash prizes and expended \$284,050.04 for overhead and other expenses. The Auditor's report further showed that Ms. Hoglund allocated only a small portion of the receipts -- i.e., \$69,354.77 -- to her campaign committee and that most of these receipts were disclosed in reports filed with the Commission. Staff findings showed that Ms. Hoglund registered as a candidate in April 1996; that her Committee applied to the DPS for a license to conduct games of chance in July 1996; and that the license was granted and later renewed in November 1996 and February 1997. The staff further noted that the purpose of the games, as stated in the Committee's by-laws was to "raise funds necessary for the election of Annette Hoglund to the Maine House of Representatives." The DPS application listed Ms. Hoglund as the "person responsible for operation of ... the games," and CEAH as the organization with which Ms. Hoglund was affiliated.

Discussion focused on the issue of whether funds derived from the sale of the tickets were reportable in their entirety. Mr. William Cote was present and represented CEAH. He contended that the income did not fit within the definition of "contribution" in 21-A M.R.S.A. Section 1012(2) (A) (1), because those who purchased tickets did so to win prizes, not to influence "the nomination or election of any person to ... office" He said he had made it a point to stop by the hall in which the games were held to inquire of those present why they had

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come and that most indicated they were there to play beano. On concluding his remarks, Mr. Cote circulated samples of the tickets sold at the door. He explained that the name imprinted thereon; i.e., "die committee to elect," was incomplete for lack of space on the ticket.

He further offered that signs displayed in the hall at eye level bore the name "CEAH." In the discussion that followed, questions were raised as to how the income derived from the games was spent; whether the names of those purchasing tickets were recorded as required by 21-A M.R.S.A. Section 1016-A; whether the same persons attended regularly; and whether Ms. Hoglund had registered as a candidate for the 1998 elections. In response, Mr. Cote said that players' names were not recorded; that a substantial amount of the proceeds went to charitable organizations. Responding to a question posed by the staff, Mr. Cote said the entity staging the games; i.e., CEAH, and the entity registered as a candidate committee with the Commission were one and the same entity. Ms. Canavan then offered that Ms. Hoglund had re-registered as a candidate after the 1996 election.

At the conclusion of the discussion, Mr. Mackenzie moved, and Ms. Nelson seconded, to table the matter. The motion carried. Mr. Webster then asked that the staff provide at the next meeting a copy of the State Auditor's report; and that Mr. Cote prepare a brief outlining more fully the statutory basis for the position held by CEAH with respect to the reporting of campaign contributions.

Next, the Commission considered the request of Representative Vedral for an advisory opinion as to the permissibility of his selling advertising space on the Web as a means of raising funds to finance his election campaign. In his letter to the Commission, Representative Vedral said he maintains Web pages to inform his constituents of State issues; that the ads would be linked to these pages; and that the space for the ads would be sold to individuals, corporations and organizations.

The staff offered the view there would be no legal bar to the course of action proposed by Representative Vedral provided that he met record-keeping and reporting requirements set forth in the law; that he complied with contribution limitations; and that he neither accepted nor solicited funds for the ads during the legislative session.

Representative Vedral was present, and on being recognized, rose to address the Commission. He expressed his thanks to the members for considering his request, and said he would abide by any decision the Commission deemed appropriate under the circumstances. At the conclusion of his remarks, Judge Henry moved, and Mr. Mackenzie seconded, to accept the staff recommendations for the time being; but to re-examine the issue after the Legislative session for any problems that may have ensued.

Next, Ms. Canavan informed members that Requests for Proposals for a facilitator and a drafter had been solicited; that the deadline for receipt of such was November 17th, 1997; that once the deadline had passed, the proposals would be evaluated and, based on the outcome of that evaluation, a decision made as to the successful candidates.



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The Commission then turned to item #5: the status of plans to develop software to facilitate electronic filing of reports. Mr. Mackenzie said the Pew Foundation had agreed to permit the Center for Responsive Politics to reprogram existing grant funds for the purpose of providing technical assistance to the State of Maine for a reporting system. He said he would soon be meeting with Mr. Raymond, Ms. Canavan and other state officials to talk about technical issues. Finally, he reminded members that the time was fast approaching for the Commission to consider hiring a technical person to assist with software development and trouble shooting.

Next, the Commission considered item #6: the complaint of Ms. Karen D'Andrea against SAPPI/S.D. Warren in which it was alleged that S.D. Warren had circulated a political communication in violation of the attribution law. Mr. Webster asked, and was granted permission, to be excused because of a potential conflict of interest, whereupon Mr. Mackenzie assumed the role of Chair. Mr. Jonathan Carter was present and represented Ms. D'Andrea. He expressed support for her complaint claiming that the communication in question "was clearly distributed for the purpose of influencing the outcome of an election" and that it failed to state who authorized and paid for it as required by law. Mr. Matthew Manahan was present and represented S.D. Warren. He asserted that the complaint had no merit; that the document in question was exempt from attribution requirements because it was a private communication, circulated only to employees (members) of S.D. Warren; and that 21-A M.R.S.A. Section 1055 did not regulate expenditures for private communications.

Asked to provide guidance as to the meaning of 21-A M.R.S.A. Section 1052(4) (A) (3) which defines expenditure, Counsel Gardiner explained that the statute excludes expenditures made by a "membership organization or corporation to its members or stockholders." She there upon expressed the view that the term "members" in the context of the statute refers to membership organizations while the term "stockholders" refers to corporations. At that point Mr. Manahan argued that the statute was ambiguous; that because a potential penalty was involved, the Commission was obliged to give the benefit of the doubt to the person trying to understand the law, to wit, S.D. Warren. He then claimed that the Commission had previously ruled that "a communication to a discrete group of people with special relationships to a company are not public communications;" that pursuant to that precedent, "the case had already been decided."

At that point, Mr. Mackenzie moved, and Ms. Nelson seconded, to table the matter. After further discussion, Ms. Nelson withdrew her motion; whereupon Ms. Nelson moved that the Commission dismiss the complaint on the basis that the communication in question was private and hence not subject to attribution requirements. Ms. Cronkhite seconded and it was voted.

Next, the Commission considered Item #7: the complaint of Citizens for A Sustainable Forest and Jobs vs. Ms. D'Andrea in which it was alleged that Ms. D'Andrea violated the attribution law by failing to state on a political communication the name of the person who paid for and authorized it. Mr. Webster again asked, and was granted permission, to step down as chair because of a potential conflict of interest, whereupon Mr. Mackenzie agreed to assist in that role. Mr. Jonathan Carter was present and spoke in support of Ms. D'Andrea. He said the communication in question was a press release, mailed to a select few, and not to the general public; that the communication was therefore private and not subject to the attribution law. He



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said the fact that the communication named Ms. D'Andrea as the contact person was evidence that no attempt had been made to hide its source. Mr. Manahan then rose to address the Commission, asserting that the communication was a handbill; that under the statute, handbills are treated as public communications; that the communication was therefore subject to the attribution law. After a lengthy discussion of the matter, Judge Henry moved, and Ms. Nelson seconded, to dismiss the matter on the basis that the communication was not a "public communication" under 21-A M.R.S.A. Section 1055. The motion failed for lack of a majority.

Thereupon, Ms. Cronkhite moved, and Ms. Nelson seconded, to penalize Ms. D'Andrea on the basis that the communication was subject to the provisions of Section 1055. The motion failed for lack of a majority.

Mr. Mackenzie then suggested that the staff prepare a memo interpreting the law and that the Commission review the memo at the next meeting. The suggestion was noted.

At 11:00 a.m. a brief recess was called. The meeting was reconvened at 11:07, at which time, the Commission turned to Item #8 on the agenda: the letters of complaint of Mr. Manahan on behalf of the Citizens for a Sustainable Forest and Forest Jobs (CSF). The letters, dated October 14th, October 30th, and November 5th, requested that the Commission investigate to determine:

1. Whether the Vote No on 1 political action committee (VNPAQ failed to report pledges in two separate instances.
2. Whether VNPAC failed to disclose in-kind contributions in the form of volunteer services provided by Mr. Carter, the Sierra Club, and a group known as the Forest Ecology Network (FEN).
3. Whether VNPAC failed to report the cost of a mailing circulated by the group known as the Forest Ecology Network (FEN).
4. Whether FEN failed to report the cost of a mailing circulated in opposition to Question 1 on the November 1997 ballot.
5. Whether FEN failed to include attribution on its mailing.
6. Whether Maine Sierra Club failed to include attribution on three separate documents.
7. Whether both VNPAC and the Ban Clear-cutting Committee failed to disclose the actual mailing address of a donor known as CAREML
8. Whether Citizens to Protect Maine's Future failed to include attribution on certain political ads which appeared in several newspapers on several dates.
9. Whether both VNPAC and BCC are guilty of a Class E Crime because they knowingly accepted contributions made in the name of another.

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10. Whether both VNPAC and BCC are guilty of a Class E Crime because they accepted contributions from an unregistered PAC.

11. Whether CAREMI is an unregistered PAC. (Mr. Manahan suggested that if someone wrote a check to CAREMI and CAREMI spent money in support of or opposition to a ballot issue, CAREMI fits within the definition of a PAC.)

12. Whether CAREMI is guilty of Class E Crime because it failed to register as PAC.

Mr. Manahan was present and, on being recognized, rose to address the Commission concerning his complaints. He questioned whether VNPAC had failed to properly report certain pledges in light of the fact that the Committee ended the October quarterly filing period (September 30th, 1997) with a balance of \$184; that it listed no pledges; and that shortly thereafter, VNPAC officials reserved ad space with several TV stations. He said that VNPAC's pre-election report raised similar questions since it showed a cash balance of \$10,469.59 as of October 23rd, 1997 (the closing date), and listed no pledges; but that VNPAC officials spent nearly \$100,000 the following day on media buys.

Mr. Jonathan Carter was present and spoke on behalf of VNPAC. He explained that the nature of VNPAC's campaign was such that officials did not know from day-to-day and week-to-week if and when CAREMI -- its strongest supporter -- would be donating to the campaign. He said that when CAREMI wired money to VNPAC, he, in turn, would immediately wire the money to Mr. Ken Swopes, the producer of the ads; that hence, there was little lag time between the receipt of a contribution and the purchase of a media buy.

He said that he went to Boston on October 7th, 1997 to help produce the commercials; that he returned to Maine on the 7th or 8th; that he then called CAREMI who, in turn, agreed to support the ads. He said the rapidity with which decisions were made was typical of the Committee's modus operandi. Responding to a question posed by Mr. Webster, Mr. Carter said the Committee had reserved no air time prior to October 1st, 1997.

The Commission members thereupon reviewed VNPAC's campaign finance reports in detail, and on concluding, arrived at the consensus there were insufficient grounds for believing a violation had occurred. On that basis, Mr. Mackenzie moved, and Judge Henry seconded, to dismiss the complaint. The motion was voted.

The next issue to undergo review was whether VNPAC failed to disclose certain in-kind contributions including:

- 1) the fair market value of Mr. Carter's own time,
- 2) the fair market value of volunteer services provided by the Sierra Club, and
- 3) the fair market value of services provided by a group known as the Forest Ecology Network (FEN).

Mr. Manahan again asked, and was granted permission to air his concerns. He argued that FEN and VNPAC were one and the same group with different names; that hence, expenditures made



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by FEN were properly reportable to VNPAC. He said that FEN had circulated a mailing to members of the general public but had not reported the fair market value of the mailing to VNPAC; and that the Sierra Club had likewise failed to report in-kind services associated with a mailing. He argued that if FEN officials were acting autonomously, they should have reported the cost of the mailing directly to the Commission since the purpose of the mailing was to influence the outcome of the election.

Mr. Carter then aired his concerns about Mr. Manahan's claims. He said that FEN and VNPAC were separate organizations; that FEN had grown out of the 1996 Ban Clear Cutting Committee; that its primary purpose was to educate voters on forestry issues; and that the status of the organization was nonprofit, tax-exempt. VNPAC, he said, was established solely for the purpose of opposing the forestry compact. He said that prior to becoming involved in efforts to oppose the Compact; he had taken a leave of absence from his position as executive director of FEN so as not to jeopardize FEN's tax-exempt status. He said that consulting fees paid to him in connection with VNPAC were reported in their entirety in reports filed with the Commission. He then expressed the opinion that it would place an undue burden on voters desiring to participate in the political process to require them to report the activity of each volunteer.

Mr. Webster then invited comments from Sierra Club officials; whereupon Ms. Joan Saxe rose to address the Commission. She said that Sierra had incurred some minor costs in circulating a press release in which the group announced its position on the Compact; that only volunteer labor was involved in connection with that effort; and that the only activity conducted by Sierra in opposition to the Compact was the press conference. She said the group was a registered PAC, not associated with VNPAC.

Mr. Mackenzie then expressed concern at the prospect of PACs having to maintain records and to report the activities of each volunteer providing services without compensation, asserting that such a requirement would be burdensome to both volunteers and committees. On that basis, he moved that the matter be dismissed. Judge Henry seconded and the motion was voted.

At that point, Mr. Manahan agreed to withdraw his complaint against the Sierra Club with respect to the reporting of volunteer services.

Next, the Commission turned to the issue of whether the cost to FEN of circulating certain literature constituted a reportable expenditure under the law.

Addressing the Commission, Mr. Carter explained that the primary purpose of the communication in question was to solicit new members, not to oppose the Compact; that FEN members were especially sensitive to the fact that a political spending might jeopardize the group's non-profit status; that they carefully researched the law prior to sending the mailing and were careful not to include language in the communication that could be deemed to be express advocacy. At the point, Mr. William Sugg rose to address the Commission in support of FEN. He said that under a ruling issued by the Court of Appeals for the First Circuit Court, a communication must unambiguously deliver a message of express advocacy in order to require attribution. He said the communication in question includes none of the words defined as



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express advocacy under *Buckley vs. Valeo*; i.e., "vote for, vote against, cast your ballot for," etc, that it was thus not subject to the attribution or reporting laws.

In a lengthy discussion of the issue, Commission members questioned whether the communication was subject to attribution given that its apparent purpose was twofold: to solicit members and to discuss election issues. As the discussion concluded, Mr. Manahan expressed the view that regardless of the Commission's decision with respect to the attribution requirement, the cost of the communication was clearly reportable because it fit within the definition of expenditure which includes "A . . . payment made for the purpose of influencing the . . . defeat of an . . . initiative in this State . . ."

At that point, Ms. Cronkhite moved, and Mr. Mackenzie seconded, to find FEN in violation of the reporting laws on the basis that the apparent purpose of the communication was to influence the outcome of an election. The motion carried.

At 12:05 a.m. Mr. Webster moved, and it was seconded, to adjourn.